

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

FILED

MAR 02 2009

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY NMA

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

No. 08-1680

STEVEN A. ADELMAN,)
Bar No. 018198)

RESPONDENT.)

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The Respondent was involved in litigation when certain irregularities occurred. The State Bar was notified and they thoroughly investigated the matter. A Tender of Admissions and Agreement For Discipline By Consent has been filed.

FINDINGS OF FACT

1. The Respondent was assigned to represent a Defendant trucking company.
2. The Respondent filed an unverified initial Disclosure Statement.
3. The Respondent was unable to find the individual who was the truck driver before he filed his unverified initial Disclosure Statement.
4. The Plaintiff in the case filed their initial discovery on 7/2/07, which consisted of non-uniform interrogatories as well as uniform interrogatories and Plaintiff's First Request for Production.
5. It was not until 11 months later that the Respondent spoke directly with the individual truck driver.
6. The Plaintiff filed a motion for summary judgment based upon the failure of the Defendants to respond to their motions.
7. Respondent reviewed the law firm computer to see when the responses had been filed. They had only been edited once on the computer and there was no evidence that it had been completed and forwarded to the Plaintiffs.
8. The Respondent told the Plaintiff that he thought that the responses had been

completed and he send another one back-dating it approximately 10 months. The Respondent also took depositions in this case without the Plaintiff's agreement, a court order, and knowing that the Plaintiff would not participate in these depositions.

9. Respondent also attempted to learn information about the Plaintiff's bathroom habits and lack of indoor plumbing facilities, which Judge Oberbillig found inappropriate.
10. Judge Oberbillig found certain violations of Rule 11 and he requested that the State Bar conduct an investigation.
11. Judge Oberbillig also found that the admissions were back-dated and mailing certificate was false. He found this conduct unprofessional at a minimum, inappropriate behavior and referred the matter to the State Bar.

CONCLUSIONS OF LAW

1. The filing of an unverified initial Disclosure Statement is in violation of E.R. 1.2, 1.4, and 8.4(d).
2. The service of improper discovery requests and motions are in violation of E.R. 1.3, 3.2, 3.4 and 4.4.

STANDARDS

The Standards which are applicable are 4.43 Lack of Diligence, and 7.3, Violations of Other Duties Owed As A Professional. Standard 4.43 deals with a lawyer being negligent and not acting with reasonable diligence in representing a client which causes injury or potential injury to a client. *Standard 7.3* deals with reprimanding (censure in Arizona) is appropriate when the lawyer negligently engages in conduct in violation of the duty owed as a professional and causes injury or potential injury to a client, the public, or legal system.

Aggravating Factors: 1) *Standard 9.22(d)*, multiple offenses; Respondent violated numerous ethical rules and duties in this matter; 2) *Standard 9.22(I)*; Substantial experience in the practice of law, as the Respondent was admitted to the State Bar in 1997.

Mitigating Factors: 1) *Standard 9.32(a)*, absence of a prior disciplinary records; 2) *Standard 9.32(e)*, full and free disclosure to disciplinary board or cooperative attitude towards the proceedings.

PROPORTIONALITY

In re Bradley, SB-08-0026-D (2008), the attorney failed to adequately represent and communicate with his client in a personal injury case. The attorney was censured and received a one-year of term of probation along with meeting the LOMAP requirements. Based upon the violations of Rule 42, Ariz.R.Sup.Ct., and specifically, E.R.1.1, 1.2, 1.3, 1.4, 3.2, and 8.4(d).

SANCTIONS

The Respondent, the State Bar as well as this Hearing Officer, believe that the sanctions for these violations should be as follows:

1. Respondent shall receive a Censure;
2. Respondent shall be placed on Probation under the following terms and conditions:
 - a. Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP) AT 602-340-7313 within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office procedures, including, but not limited to, compliance with E.R. 1.2, 1.3, 1.4, 3.2, 3.4(a), 4.4(a), and 8.4(d). The Director of LOMAP, shall develop "Terms and Conditions of Probation," and those terms shall be incorporated herein by reference. The probation period will begin to run at the time of Judgment and Order and will conclude one year from the date that Respondent has signed the "Terms and Conditions of Probation." Respondent shall be responsible for any costs associated with LOMAP.
 - b. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

c. In the event that the Respondent fails to comply with the foregoing terms of probation, and the State Bar of Arizona thereof receives information, Bar Counsel shall file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practical time, but in no event later than thirty (30) days after receipt of notice, to determine whether a term a probation has been breached, and if so, to recommend an appropriate action and response. If there is an allegation that the Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

3. Respondent shall pay all costs incurred by the State Bar of Arizona in bringing these disciplinary proceedings. In addition, the Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office in this matter. The State Bar's Itemized Statement of Costs and Expenses is attached as Exhibit "A," and is incorporated herein by reference.

DATED this 2nd day of March, 2009.

Harlan Crossman / NM
Harlan J. Crossman
Hearing Officer 8L

Original filed with the Disciplinary Clerk
this 2nd day of March, 2009.

Copy of the foregoing mailed
this 3rd day of March, 2009, to:

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by Neeta Manekar